

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

JANUARY TERM, 1906.

No. 1631.

406

MANSOUR SAMAHIA, APPELLANT,

vs.

EDMUND T. MASON, HENRY J. MASON, AND WILLIAM
MASON, PARTNERS, TRADING AS E. T. MASON & COM-
PANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 1, 1905.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1906.

No. 1631.

MANSOUR SAMAHA, APPELLANT,

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EDMUND T. MASON, HENRY J. MASON, AND WILLIAM MASON, PARTNERS, TRADING AS E. T. MASON & COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

No. 1631.

MANSOUR SAMAHA, Appellant,

vs.

EDMUND T. MASON ET AL.

Supreme Court of the District of Columbia.

At Law. No. 46623.

EDMUND T. MASON, HENRY J. MASON, and WILLIAM MASON, Partners, Trading as E. T. Mason & Company, Plaintiffs,

vs.

N. E. HAGGAR, S. E. HAGGAR, and F. S. G. DAAVID, Partners, Trading as Hagggar Bros. and Daavid Company, and Mansour Samaha, Defendants.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration, Notice to Plead, and Affidavit.*

Filed December 8, 1903.

In the Supreme Court of the District of Columbia.

At Law. No. 46623.

EDMUND T. MASON, HENRY J. MASON, and WILLIAM MASON, Partners, Trading as E. T. Mason & Company, Plaintiffs,

vs.

N. E. HAGGAR, S. E. HAGGAR, and F. S. G. DAAVID, Partners, Trading as Hagggar Bros. and Daavid Company, and Mansour Samaha, Defendants.

Said plaintiffs sue said defendants for unjustly detaining their, the said plaintiffs' goods and chattels, to-wit: three Persian rugs worth

\$55.00 each; three Persian rugs worth \$45.00 each; five Bloochistan rugs worth \$8.50 each; nineteen Shervan rugs worth \$8.00 each; twelve Shervan rugs worth \$12.00 each; three Ghendjis rugs worth \$11.00 each; nine Ghendjis rugs worth \$15.00 each; six Kazak rugs worth \$20.00 each; fifteen Kazak rugs worth \$17.50 each; eight Mussones rugs worth \$13.00 each and fifty Shervan rugs worth \$13.00 each, all of which said chattels are of the value of nineteen hundred and forty-seven and 50-100 dollars (\$1947.50). And the plaintiffs claim that the same be taken from the defendants and delivered to them; or, if they are eloigned, that they may have judgment for their said value, and all mesne profits and damages, which they estimate at one thousand dollars (\$1000.00), besides costs.

H. W. SOHON,
Attorney for Plaintiffs.

2 The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise judgment.

H. W. SOHON,
Attorney for Plaintiffs.

DISTRICT OF COLUMBIA, ss:

I, Montague Lessler being duly sworn, on oath, say that I am the agent and attorney for the plaintiffs named in the foregoing declaration; that according to affiant's information and belief the plaintiffs are entitled to recover possession of the chattels proposed to be replevined, being the same described in the foregoing declaration; that the defendants detain the same; that said chattels are not subject to such detention, and were not taken upon any writ of replevin.

MONTAGUE LESSLER.

Subscribed and sworn to before me this 8th day of December, A. D. 1903.

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't Cl'k.*

3

Writ of Replevin.

In the Supreme Court of the District of Columbia.

At Law. No. 46623.

EDMUND T. MASON, HENRY J. MASON, and WILLIAM MASON,
Partners, Trading as Mason & Company, Plaintiffs,

vs.

N. E. HAGGAR, S. E. HAGGAR, and F. S. G. DAAVID, Partners,
Trading as Hagggar Bros. and Daavid Company, and Mansoul
Samaha, Defendants.

The President of the United States to the marshal for said District,
Greeting:

The plaintiffs in this action having entered into an undertaking,
with surety as required by law, you are therefore hereby commanded
to take the goods and chattels claimed by the plaintiffs, to wit:

Three Persian rugs worth \$55.00 each;

Three Persian rugs worth \$45.00 each;

Five Bloocchistan rugs worth \$8.50 each;

Nineteen Shervan Rugs worth \$8.00 each;

Twelve Shervan rugs worth \$12.00 each;

Three Ghendjis rugs worth \$11.00 each;

Nine Ghendjis rugs worth \$15.00 each;

Six Kazak rugs worth \$20.00 each;

Fifteen Kazak rugs worth \$17.50 each;

Eight Mussones rugs worth \$13.00 each;

Fifty Shervan rugs worth \$13.00 each;

4 All of which chattels are of the value of nineteen hundred
and forty-seven and 50/100 dollars from the defendants and
deliver the same to the plaintiffs. And warn the defendants to ap-
pear in said court on or before the twentieth day, exclusive of Sun-
days and legal holidays, occurring after the day of the service of
this writ; and answer said action; and that if they make default in
so doing the plaintiffs may proceed to judgment and execution.

Witness, the Honorable Harry M. Clabaugh, chief justice of said
court, the 8th day of December, A. D. 1903.

[SEAL.]

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS,
Assistant Clerk.

SCHEDULE.

In the Supreme Court of the District of Columbia.

No. 46623.

EDMUND T. MASON, HENRY J. MASON, and WILLIAM MASON,
Partners, Trading as Mason and Company,

vs.

N. E. HAGGAR, S. E. HAGGAR, and F. S. G. DAAVID, Partners,
Trading as Hagggar Bros. and Daavid Company, and Mansoul
Samaha.

Schedule of levy under

Five (5) Mussones rugs	\$65.00
Eleven (11) Ghendjis rugs	157.00
5 Twelve (12) Kazak rugs.....	212.50
Fifty-three (53) Shervan rugs.....	614.00
Four (4) Bloochistan rugs	34.00
Five (5) Persian rugs	245.00
	<hr/>
	\$1,327.50

We, the undersigned, citizens of the District of Columbia, having been duly summoned and sworn by the marshal of said District, do hereby certify that we have appraised the property described in the foregoing schedule at thirteen hundred and twenty-seven and 50/100 dollars.

Given under our hands and seals, this eighth day of December A. D. 1903.

JAMES W. RATCLIFFE. [SEAL.]

ADAM A. WESCHLER. [SEAL.]

Marshal's Return.

Ret'd. Jul. 29 1904

Replevied as per schedule filed herewith Dec. 8, 1903. Served copies of declaration summons and notice to plead on defendant Mansoul Samaha Dec. 8, 1903.

Turned property over to platffs. atty. Dec. 19, 1903. See his receipt on back of writ

Defendants: N. E. Hagggar, S. E. Hagggar and F. S. G. Daavid.
Not to be found.

(Endorsed:) Jan. 2, 1904. Dec. 19", 1903 Received of Aulick Palmer, U. S., marshal D. C. the goods referred to in the schedule attached to the within writ. Aulick Palmer, marshal. E. T. Mason & Co. By H. W. Sohon, attorney.

6

Plea of Defendant Mansour Samaha.

Filed December 30, 1903.

In the Supreme Court of the District of Columbia.

Law. No. 46623.

E. T. MASON & COMPANY

vs.

HAGGAR BROTHERS & DAAVID COMPANY and MANSOUR SAMAHA.

Come now the defendant, Mansour Samaha, by Ralston & Siddons and Eugene A. Jones, his attorneys, and for pleas to the declaration herein filed says that he is not guilty in manner and form as in said declaration alleged.

RALSTON AND SIDDONS,
EUGENE A. JONES,
Attorneys for Mansour Samaha.

Plea of Defendants Hagggar Brothers and Daavid Company.

Filed December 30, 1903.

In the Supreme Court of the District of Columbia.

Law. No. 46623.

E. T. MASON & COMPANY

vs.

HAGGAR BROTHERS & DAAVID COMPANY and MANSOUR SAMAHA.

7 Come now the defendants, Nassif E. Hagggar, Saleem E. Hagggar and Ferdinand G. Daavid, by Ralston & Siddons and Eugene A. Jones, their attorneys, and for pleas to the declaration herein filed say that they are not guilty in manner and form as in said declaration alleged.

RALSTON & SIDDONS,
EUGENE A. JONES,
*Attorneys for Nassif E. Hagggar, Saleem E. Hagggar,
Ferdinand G. Daavid.*

Joinder of Issue.

Filed January 5, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 46623.

EDMUND T. MASON ET AL., Plaintiffs,

vs.

N. E. HAGGAR ET AL., Defendants.

The plaintiffs join issue on the plea of the defendant, Mansour Samaha in the above entitled cause.

H. W. SOHON,
Attorney for Plaintiffs.

Ralston & Siddons and Eugene A. Jones, attorneys for Mansour Samaha:

Please take notice that the issue joined in the above entitled cause will be tried at the next term of the court.

H. W. SOHON,
Attorney for Plaintiffs.

Jan. 5, 1904.

Joinder of Issue.

Filed January 5, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 46623.

EDMUND T. MASON ET AL., Plaintiffs,

vs.

N. E. HAGGAR ET AL., Defendants.

The plaintiffs join issue on the plea of the defendants, Nassif E. Hagggar, Saleem E. Hagggar and Ferdinand G. Daavid in the above entitled cause.

H. W. SOHON,
Attorney for Plaintiff.

Memoranda.

May 24, 1905.—Verdict for plaintiffs for possession of property replevied and one cent damages.

May 24, 1905.—\$180.00 deposited in registry of court as tender.

9 Supreme Court of the District of Columbia.

MONDAY, *June 12th*, 1905.

Session resumed pursuant to adjournment, Hon. Harry M. Claibough, chief justice presiding.

* * * * *

No. 46623. Law.

EDMUND T. MASON, HENRY J. MASON and WILLIAM MASON, Partners, Trading as E. T. Mason Company, Plaintiffs,

vs.

N. E. HAGGAR, S. E. HAGGAR, and F. S. G. DAVID, Partners, Trading as Hagggar Bros. and Daavid Company and Mansoul Samaha, Defendants.

Upon consideration of defendants' motion for a new trial filed herein, it is ordered that the same be, and it is hereby overruled; and judgment on the verdict is ordered. Thereupon, it is considered and adjudged that the plaintiffs herein recover of the defendants herein one cent for his damages as aforesaid assessed, together with their costs of suit to be taxed by the clerk, and have execution thereof.

From the foregoing the defendants by attorneys in open court, note an appeal to the Court of Appeals, and pray that bond be fixed. Whereupon said defendants are required to furnish bond herein for costs in the sum of one hundred dollars with surety or sureties to be approved by this court.

10 Further, upon motion, the time within which to settle the bill of exceptions and file transcript is hereby extended to September 30th, 1905, inclusive.

Supreme Court of the District of Columbia.

THURSDAY, *July 6th*, 1905.

Session resumed Hon. Thos. H. Anderson, associate justice, presiding.

* * * * *

No. 46623. Law.

E. T. MASON & Co., Pl'ff,

vs.

HAGGAR BROS. and DAAVID Co. and MANSOUR SAMAHA.

Upon consideration of the motion of defendant Mansour Samaha, filed herein by his attorneys praying for an order allowing him a

severance on the appeal herein, it is ordered that said defendant be and he is hereby granted such severance.

Memoranda.

July 6th, 1905.—Appeal bond filed.

September 25, 1905.—April term prolonged 38 days to settle bill of exceptions and time to file record in Court of Appeals extended to December 1, 1905.

11 November 2, 1905.—Bill of exceptions submitted.

Supreme Court of the District of Columbia.

MONDAY, November 13th, 1905.

Session resumed pursuant to adjournment, Hon. Harry M. Claibagh, chief justice, presiding.

No. 46623. At Law.

EDMUND T. MASON, HENRY J. MASON, WILLIAM MASON, Copartners, Trading as E. T. Mason and Company, Plaintiffs,

vs.

NASSIF HAGGAR, SALEEM HAGGAR, FERDINAND G. DAAVID, Copartners, Trading as Haggar Bros. and Daavid Company; Mansour Samaha, Defendants.

The bill of exceptions heretofore submitted herein, being now signed, said bill of exceptions is hereby made of record now for then.

12

Bill of Exceptions.

Filed November 13, 1905.

In the Supreme Court of the District of Columbia.

Law. No. 46623.

EDMUND T. MASON, HENRY J. MASON, WILLIAM MASON, Copartners, Trading as E. T. Mason and Company,

vs.

NASSIF HAGGAR, SALEEM HAGGAR, FERDINAND G. DAAVID, Copartners, Trading as Haggar Bros. and Daavid Company, Mansour Samaha.

Be it remembered that on the twenty-second day of May, 1905 before the honorable chief justice of said court and a jury regularly

BEST COPY
from the original

impaneled, the above entitled cause came on to be heard upon issue regularly joined, the plaintiffs, to maintain the issue on their part joined, gave evidence as follows:

HENRY J. MASON, being first duly sworn, testified that he was a member of the firm of E. T. Mason & Company, composed as above and trading in the city of New York, State of New York, and engaged in the business of general importers of silks and rugs and manufacturers of silks; that about October 23rd, 1903, Mr. Haggar of the firm of Haggar Brothers and Daavid, came to their rug department, picked out a certain quantity of rugs which were selected

13 by him carefully and laid aside awaiting the passing of a credit before shipment, and Mr. Haggar or Mr. Daavid, witness being unable to remember exactly which, stated casually their financial condition; they didn't have the exact figures so as to give a statement; witness told them they would have to pay half cash, and besides, if they wanted the goods, they would have to give witness a signed statement. Witness furnished them with a blank and subsequently they agreed to pay half cash and take the statement back with them and mail it to witness. Witness's firm received a check for five hundred dollars (\$500.00) on the account, together with the signed statement. It was not satisfactory and witness's firm got three hundred dollars (\$300) more from them. Eight hundred dollars (\$800.) was as much as they would pay on the bill, which amounted to nineteen hundred dollars (\$1900.00) odd and witness wanted one thousand dollars (\$1000.00). Witness's firm considered that they would ship the goods under these circumstances, and did ship them on November fifth. Said signed statement received by witness's firm was in the words and figures following:

"——— hereby make the following statement as a basis for credit, and to induce E. T. Mason & Co. to grant same, and to obtain the possession of goods sold by them to —— upon credit. This statement is a true and accurate showing of — present financial condition, and — hereby represent that —— perfectly solvent. It is made in confidence and for the exclusive use of E. T. Mason & Co. Should — financial standing be hereafter in any way impaired while in debt to the said E. T. Mason & Co. — hereby agree to notify them in writing at once.

14

<i>Assets.</i>	
Merchandise on hand.....	\$17,500.00
Accounts and bills receivable (good).....	5,200.00
Cash on hand in bank.....	8,500.00
Real estate.....	
“ Mortgaged for.....	
“ Rented for (purpose).....	
“ Rented for (amount).....	
“ Insured for.....	

2—1631A

No.	Doz.	Pcs.	Yards.	Size.	Description	Price	Total.
1		3			Persian rugs	55.00	165.
2		3			" "	45.00	135.
3		5			Baluchistans	8.50	42.50
4		19			Shrivans	8.00	152.
5		12			"	12.00	144.
6		3			Ghendjies	11.00	33.
7		9			"	15.50	139.50
8		6			Kazaks	20.00	120.
9		15			"	17.50	262.50
10		8			Mussouls	13.00	104.
		50			Shirvans	13.00	650.
							<hr/> 1947.50

16 That these goods were shipped to Haggar Bros. and Daavid Co. on Nov. 5th and that no further communication was received until December 5, 1903, when witness's firm received the following letter:

Summer Branch, Asbury Park, N. J.

Foreign Offices: Constantinople, Turkey, Teheran, Persia, Paris, France.

Haggar Bros. & Daavid Co., Direct Importers of Persian Rugs and Oriental Art.

P. O. Box 251.

WASHINGTON, D. C., Dec. 4, 1903.

Messrs. E. T. Mason & Co., 32 Green Street, New York City, N. Y.

GENTLEMEN: We regret to have to inform you that owing to losses incident to an unusual dull season and unexpected heavy expenses, we have been compelled to discontinue our business. We endeavored very earnestly to continue, but lack of capital, with losses suffered, rendered this impossible. An opportunity presented itself to us to sell out what was left of the stock and business, and this we did to Mansour Samaha, of this city, who has taken possession of the property; our bill of sale to him having been recorded a few days since.

We are at this time unable to discharge our indebtedness to you, but we expect to resume business in February next, when we shall receive, we believe, capital sufficient to permit us to do this. About that time, we hope to commence to pay the debts that we now
17 owe, and liquidate them in full as rapidly as the means at our disposal will permit.

In conclusion we trust that you will be patient with us and accept our assurance that it is our very sincere desire to get rid of all our obligations as soon as it is possible to do so. In the meantime, we suggest, nothing could be gained by suing us, and indeed if that

were done, it would embarras very muc hour expected resumption of business in February next.

Truly yours,

HAGGAR BROS. & DAAVID CO.
Per N. E. HAGGAR,
S. E. HAGGAR,
F. S. G. DAAVID.

On cross-examination, witness testified that his firm had dealt with Hagggar Bros. before the transaction referred to and had been paid; that on this occasion witness was acting as credit man and agreed to ship the goods to Hagggar Bros. & Daavid Company, if they would pay plaintiff's half cash and sign the statement as to financial condition; this occured about October 23, 1903; that Hagggar Bros. & Daavid, sent palintiffs a check for five hundred dollars (\$500) the receipt of which was acknowledged in the following letter produced by defendants.

18 Oriental Rug Department, 7 East 17th Street.

E. T. Mason & Co., Silk Importers and Manufacturers, 28 and 30
Greene Street.

NEW YORK, Oct. 28, 1903.

Messrs. Hagggar Bros. & Daavid Co., Washington, D. C.

GENTLEMEN: We are in receipt of your favor with enclosure of cheque for \$500. and statement. We beg to advise that we have investigated your references, and, while we have no hesitation in offering you the terms as below stated and would be pleased to do business, we cannot go at the present time any deeper. We, therefore, advise you that the amount of the rugs selected was \$1900. odd, and we would be pleased to ship same as per your dictation, namely, November 5th, if you will send us a further cheque for \$500., making in all \$1000. If you do not wish to accept these terms, we will be pleased to return your cheque for \$500. which you have forwarded.

Yours very truly,

E. T. MASON & CO.

That in reply to this letter, plaintiffs received a further payment of three hundred dollars (\$300.00), the receipt of which was acknowledged in the following letter, produced by defendants:

19 Oriental Rug Department, 7 East 17th Street.

E. T. Mason & Co., Silk Importers and Manufacturers, 28 and 30
Greene Street

NEW YORK, Oct. 31, 1903.

Messrs. Hagggar Bros. & Daavid Co., Washington, D. C.

GENTLEMEN: We are in receipt of your favor of the 29th inst., with enclosure of \$300. This together with the remittance of \$500. on October 26th, making \$800. we have placed to your credit.

We will ship you the rugs on Nov. 5th as requested, and we trust, that in doing so, that you will appreciate our extending you this line of credit, and take care of the same when it becomes due, in order to give us an opportunity to do further business with your house.

Very truly yours,

E. T. MASON,

The plaintiffs' firm under date of Nov. 6, 1903, sent to Haggar Bros. & Daavid Co. a duplicate of the bill or list hereinbefore set forth.

That by the foregoing letter of October 28th, the firm of E. T. Mason and Company, acknowledged receipt from Haggar Bros. and Daavid of a check for five hundred dollars (\$500) on account; that at the time they extended credit they sent around and investigated the financial responsibility of the firm, that is to say, they
20 sent around to different houses, to whom they had been referred, to see what these houses had to say regarding the firm of Haggar Bros. & Daavid Company, and they also got a mercantile report from Dun's agency; that after having made these investigations and having received the additional three hundred dollar (\$300.) check, they concluded to ship the goods. They made the investigation as to the financial responsibility at the same time that they asked Haggar Brothers and Daavid for the statement. Their investigations as to their financial responsibility were completed at about the time they received Haggar Brothers' statement back from Washington, and then, having made the investigation, and having received the statement, and the check for five hundred dollars (\$500.), they wrote the letter of October 28th; then subsequently, having received the three hundred dollars (\$300.) check from Haggar Bros. & Daavid, they sent the goods on because they concluded that they would take the risk, that is, they concluded to take the risk on the eight hundred dollars (\$800.) cash.

Q. You did not ship the goods upon their statement, did you?

A. We shipped it on their statement.

Q. Did you not say that you concluded to take this risk after you had made these investigations and received the statement and got the report from the Mercantile Company? A. Then wouldn't we ship it on that statement?

Q. I ask you,—did you not ship the goods as a result of your investigations as well as this statement? A. Taking the
21 whole together, we concluded to give this credit—on the whole of these facts together; this statement, the amount of cash, and our investigations, led us to give the credit.

The previous dealings of the firm with witness's firm had been practically satisfactory; they were taking the usual business risks.

Q. That is all you considered you were taking when you shipped those goods, was it not? A. When we give credit it is a risk.

The investigation referred to in the letter of October 28th is the investigation that was made in looking up the references and getting the report from Dun and Company. They made the inquiries of

Dun because they did that with every credit that comes in the house.

Q. You did not, then, rely on this statement that was sent to you?

A. We did.

Q. Why did you make the inquiries, then? A. We want to find out all we can find out.

Q. So you took this statement and these inquiries, and all the investigations that you made, and on the strength of all that, you shipped the goods? A. That is the idea exactly.

Q. You would not have shipped the goods upon the statement alone, would you? A. I don't think we would. We shipped the goods on that statement together with all the rest.

Q. But you do not know whether you would have shipped them then on that statement or not. A. I can't remember what my

22 thoughts were on that date over a year ago. Dun's report was obtained between October 26th and October 28th. It is dated October 29th, 1903. The goods were shipped, according to the bill on *November 6th*, and we had the report when we shipped the goods. The terms were 2, 10, 60 days. The credit was for 60 days two per cent. off for payment in 10 days.

On redirect examination, witness testified that there had been only one purchase from his firm, prior to the one in question, in July, 1903, and the amount of it was seventy-one dollars (\$71.) Witness does not know whether it was a cash transaction or not.

On recross examination, witness testified that he was not present when the rugs were seized under the writ of replevin. A stipulation between counsel for the plaintiff and counsel for Mansour Samaha, was read to the jury whereby it was agreed that Haggar Bros. & Daavid Co. purchased from various merchants, in New York city, between October 15th, 1903, and November 27th, 1903, merchandise aggregating in amount, eleven thousand, three hundred and ninety-two dollars and thirty cents (\$11,392.30), upon which there was paid by said Haggar Bros. & Daavid Company, the sum of twenty-two hundred and fifty dollars (\$2250.) at various times between said dates leaving the balance unpaid. The materiality and relevancy of such testimony, however, was reserved.

Thereupon, MONTAGUE LESLER, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

23 That he is a lawyer, practicing in New York city, and that the plaintiffs herein are one of his clients; that he came down on behalf of his clients to Washington, on Saturday, before the goods were replevined, and went to the store at 1110 F street, on the morning of December 8, 1903; that he found a sale in progress, and Samaha and two of the Haggar's present; that he and Mr. Rayner, who was with him, waited around for a while; that witness asked Samaha where Haggar was and Samaha replied: "I don't know;" that at this point, a thick-set man, near fifty (50) years of age and of medium size appeared and said: "I am Haggar." Witness said: "I represent E. T. Mason & Company and I

desire to see you about the goods you bought; and I want to tender you the money you paid and I want to get the goods for Mason & Company." The reply was: "See my lawyer" and drew out of his pocket a card bearing the name- of Ralston and Siddons. Samaha was within five (5) feet, passing to and fro, showing objects of art to some women in the place. Haggar also said: "I have not got the goods: I have sold the goods." Witnesses did not make any demand of Samaha.

On cross-examination he testified that he was not acquainted with Haggar before we went there and only knows it was Mr. Haggar by being told so. He did not make an actual tender of any money to Mr. Haggar, but was prepared to do so, if he wanted him to. He offered him no money except in the way stated. Witness said: "I want to give you the money you paid them and we want our goods." Mr. Samaha was four or five feet away, passing to and fro during this conversation. I tendered no money to Mr. Samaha.

On redirect examination, witness said that this conversation occurred at the store, 1110 F street, northwest.

Thereupon, HARRY A. L. BARKER, a witness on behalf of the plaintiffs, being first duly sworn, testified that he is employed by the Lawyers' Title Company, of the city of Washington, District of Columbia; that in October, November and December of 1903 he was
24 record-keeper for Brown and Tolson, auctioneers, and kept the record of sales for Haggar Bros. & Daavid Company, at 1110 F street, northwest; that the auction sales began on November 12, 1903, which was the beginning of the business and they had two sales a day, and sometimes three. These sales continued an hour, and sometimes an hour and a half; it was customary to have one sale in the morning and one in the afternoon and one on Saturday night. The auctioneer who cried the sales was Saleem Haggar. I took the money received from the sales, made a report of it, and turned it over to Brown and Tolson. I do not know what they did with it. These sales continued in behalf of Haggar Brothers from November 12th to November 28th, at which time they closed, and there were no more auction sales until December 7th. Witness had seen Mr. Samaha in the store prior to the 28th of November, probably two or three times. The sales were conducted about the middle of the store. Witness didn't know whether the Haggar's kept any account books or not. He saw books in the back part of the store, but what they were, witness does not know. What books witness saw, were written in a foreign language and witness could not read them. They were not regular book-keeping books, such as a day-book, journal and ledger, but entries were made in them occasionally. There was a desk in the back part of the store, which was used by the Haggar's. Witness saw Samaha in the back part of the store occasionally. Does not know whether Samaha examined Haggar's books or not. The auction sales started again on December 7th, 1903, and ran until December 12, 1903. The auction was conducted

by Mr. Saleem Hagggar and Mr. Samaha, from the seventh to the twelfth of December. Witness does not remember seeing Mr. Nassif Hagggar there nor Mr. Daavid after December 7th, but Michael Daavid was there. Witness does not know whether said Michael Daavid is related to the others or not. That Samaha adopted the same method of conducting the sales that his predecessors had.

And thereupon the defendant moved to strike out the testimony of the witness H. A. L. Barker, which motion was by the court overruled and the defendant thereupon excepted.

And thereupon ELMER W. RAINER, a witness on behalf of the plaintiff testified that he is a salesman for E. T. Mason & Company, who sell Oriental rugs, and has been engaged in that occupation for about six (6) years. That he recalls the transaction with Hagggar Bros. & Daavid Company in October and November of 1903; that he (Hagggar) came in and wanted to look at Oriental rugs and made a selection; that after the rugs had been selected, witness told him he would have to see the credit man; that witness wrote the slip, or bill identified by H. J. Mason and in evidence, and that said slip contains a list of the goods selected by said Hagggar. Witness was present while the goods were selected and showed them the goods. The rugs were held until an order was received from the office as to whether or not the goods were to be shipped. They were laid aside. Witness does not remember when they were shipped. Witness remembers coming to Washington on December 8th, and seeing Mr. Samaha. Witness went into Samaha's store, told him he wanted the rugs that E. T. Mason & Co. had sold Hagggar Bros.; that Samaha replied that he could not have them. Witness went with the marshal to identify the goods taken on the writ of replevin in this case. Witness saw the marshal take them and the goods that were taken by him were a part of the same that were sold by the firm of Mason & Company to Hagggar Bros. & Daavid Company.

On cross examination witness was asked how he identified the goods taken under the writ as the identical goods which were sold to Hagggar Bros. to which he replied that he was familiar with the stock, and knows his goods.

Q. Do you mean to say that a Mason Shirvan rug is different from the Shirvan rugs of anybody else? A. No, I don't know that they are. How do you mean different. I don't know that I catch the drift of the question exactly.

Q. I ask you if Mason's rugs known as Shirvan rugs are different from similar Shirvan rugs sold by any other dealer. A. At the same price?

Q. If they are of the same quality and the same character of rugs, they would look the same, would they not? A. Very much the same.

Q. How would you be able to say that any given Shirvan rug

was a Mason rug or the rug of somebody else? A. Because when these goods were shipped every rug that went out of our shop had a tag on it. I personally tagged, and I marked on the lot numbers.

Q. Did you find such tags on those rugs when you saw them? A. Yes, sir.

Q. Have you got a record of them? A. Not with me; no.

Q. You don't know what the marks on the rugs were? A. I don't remember. At the time the rugs were replevined I picked out the rugs that had our tags on them. I recognized the tags by my writing and my figures on them.

27 Q. Do you mean to swear that every rug you took out of that shop had a Mason tag on it? A. Not every rug.

Q. How many had it on? A. I didn't count them, but I suppose the biggest part of them did. I don't remember exactly how many pieces.

Q. Then you are not confining yourself exclusively, as a means of identification, to the presence of tags on those rugs, are you?

A. As far as possible I did.

Q. But you would take rugs, whether they had Mason's tag on them or not, if you thought they might belong to Mason; is that it?

A. I took the rugs that, to the best of my knowledge and belief, were the rugs of E. T. Mason & Company.

Q. You could not be sure you were getting E. T. Mason's rugs all the time. There was a large quantity there? A. There was a good many rugs there; yes, sir.

Q. All that you did was to follow Mason & Company's bill in picking out the rugs; was it not? A. I did not have Mason & Company's bill in my hands.

Q. You know what you had sold them? A. Yes, sir.

Q. You sold the goods yourself? A. Yes, sir; but I did not have Mason & Company's bill in my hands when I picked them out.

Q. You knew the various kinds of rugs you had sold them? A. I picked them out and I said "Lot No. 1." There was some
28 other man there, besides myself, who checked off those lots.

Q. What I mean is you knew the name of a rug, whether it was a Mussoues or a Kazak or a Shirvan? A. Yes.

Q. You knew what you were after in that respect? A. Yes, sir.

Q. So that when you went in there and got these rugs you would take as many Mussoues as you could find and as many Ghendjis as you could find and as many Kazak rugs as you could find whether you knew they were Mason & Company's rugs or not; is not that so?

A. No, sir.

Q. How did you know? A. Why, I picked them out according to the tags that had my numbers on them.

Q. You just said you didn't know how many of them had tags on. What did you do when you found one that did not have a tag on it, and why did you take a rug that didn't have Mason's tag on it? A. Because I thought it was our goods.

Q. But you did not have any reason for thinking so except the

3—1631A

AVAILABLE

bound volume

general similarity and appearance of them; is that so? A. I don't know how to take that exactly. They were my goods. Every rug I took, I took to be E. T. Mason & Company's rug.

Q. You took it to be, but you cannot be certain? A. You might say there are two hats on the table. One is yours and one is mine; but I can pick out my hat. I have seen those rugs many, many times and have handled them many times and I ought to be competent to pick out my own goods.

29 Q. Are not goods just exactly like those to be found in many establishments? A. No, sir.

Q. They are not? A. No, sir

Q. What is there peculiarly distinct about Mason & Company's rugs? A. They are not Mason's rugs. They are Oriental rugs.

Q. What difference is there between the Oriental rugs handled by Mason & Company and the Oriental rugs handled by other people? A. You hardly ever find two Oriental rugs of the same pattern and design.

Q. How many rugs were in this bill of goods? A. I don't remember. The ticket there will show.

Q. Mr. Rainer, you say some part of these goods that were taken out on this writ of replevin, were tagged with Mason's tags. Did you know how many were so tagged? A. No, I don't remember how many. The greater part of them, is my recollection.

Q. The greater part of them? A. Yes, sir; I couldn't say how many, because at the time I don't think I took any record of it.

Q. Do you know how many rugs were taken under this writ? A. I couldn't tell unless I looked at a memorandum which I think is here somewhere.

Q. So you are unable to say whether ten rugs were tagged with Mason's tags, or one hundred? A. Yes; a good deal more than ten.

30 Q. More than ten? A. I am sure of that.

Q. Then there were 100? A. I don't think there was a hundred in the whole lot. That slip will show you how many. I think it was something like 90, was it not—ninety odd pieces.

Q. You do not know how many were tagged? A. No, sir.

Q. Do not E. T. Mason & Company carry a large number of rugs of the same character as the rugs that were taken under this writ? A. Quite a large number.

Q. You do not mean to be understood as saying that you are so familiar with all of E. T. Mason's stock that you could identify one of their rugs wherever you saw it, do you? A. I don't think I could identify every rug; no.

Q. There is not any distinguishing design, or color, or texture, used by Mason in his rugs that you do not find in other Oriental rugs, is there? A. Mason don't manufacture these rugs.

Q. He buys them? A. Yes, sir.

Q. So that if there were two rugs of the same design and texture, and the same size, and one came from Mason and one from some

other dealer, you could not tell them apart, could you? A. I don't know as I ever saw two rugs of exactly the same size, pattern and color. They are like pictures——

Q. You never did see two exactly alike? A. I cannot say that I ever saw two exactly the same.

31 Q. You do not mean to say that your memory is so good that you could identify a rug coming from Mason's simply because it did come from Mason's, do you? A. I have got a pretty good memory.

Q. Answer the question. A. It depends how far back I go. I couldn't go back three or four years and do it; no.

Q. Do you think it quite possible that some rugs that were taken under this writ were not Mason's rugs? A. I wouldn't say that one of them were not Mason's rugs, but I believe that every rug I took——

Q. What? A. I say I wouldn't say that one of them were not Mason's rugs, for I believe that every rug I took belonged to E. T. Mason.

Q. Why do you believe that? A. Because of my knowledge and familiarity with the goods. I have been selling Oriental rugs for quite a good many years, and for the class of goods I sell, I think I am about as good a judge as there is in the country. I am handling my goods every day, and I come pretty near knowing my stock.

Q. Is it not a fact that you took all the rugs in that place that you could find that answered the description of the rugs called for in the writ? A. No, sir; I didn't take all of the rugs.

Q. You did not? A. There were a good many rugs left after I got through there.

Q. Are you speaking of the rugs generally? I am speaking of the rugs that answered to the description of the rugs in the writ. For instance, the writ calls for so many Kazak rugs.

32 A. I didn't have to take all of them. We sold those people \$1900 worth of goods, and only replevined about \$1200. I would only have to take two-thirds, and there would be another third left.

Q. Did you take all the rugs you saw there answering to the description, of the two-thirds? A. I didn't take all the rugs. I could have got more goods if I had wanted to, answering the description of our goods.

Q. How did you make your selection? A. By recognizing what I took to be E. T. Mason & Company's rugs.

Q. How did you recognize these rugs? A. Through handling the goods, and familiarity with the stock, and because I sold them. When Mr. Haggard came in and bought the goods, I supposed I showed him three or four lots several times, before he decided which lots out of the three or four lots he wanted. I am familiar with the goods.

Q. Mr. Rainer, the papers in this suit show that the suit was brought to recover all of the rugs that were sold by your firm to

Haggar Brothers. Why did you stop when you got \$1200 worth of rugs. A. On the advice of my attorney.

Q. Are you prepared to say that you left there some of the same rugs that were sold by Mason to Haggar Brothers? A. To the best of my knowledge and belief, quite a good many.

33 And you only took therefrom such an amount as would equal about the balance that was due on your bill? A. I suppose that was the idea in taking that amount. I was told to stop when I had enough, by the attorney.

Q. The truth of the matter is that you went in there to get \$1200 worth of rugs; is not that so? A. I don't know how much I was to get. I went in there on the advice of Mason's attorney, and picked out our goods until I was told to stop. That is all I know about that part of it.

Q. If there had been a thousand rugs distributed in the store and commingled with the stock, could you go into that store and pick out Mason's rugs? A. I cannot answer yes or no, because I cannot conceive of anybody buying a thousand Shirvan rugs.

And thereupon, counsel for the plaintiff said to the court that the value of the goods sold by Mason and Company to Haggar Bros. amounted to nineteen hundred and forty-seven dollars and fifty cents (\$1947.50) and that the value of the goods taken upon the writ of replevin, as shown by the return of the marshal was thirteen hundred and twenty-seven dollars and fifty cents (\$1327.50) and that eight hundred dollars (\$800.) was paid on account, so that it appears that thirteen hundred and twenty-seven dollars and fifty cents (\$1327.50/100) worth of goods were taken, while there was only eleven hundred and forty-seven dollars & fifty cents (\$1147.50/100) due on the account, and counsel thereupon tendered one hundred and eighty dollars (\$180.), being the difference, which tender was by the defendant Samaha, rejected. And the plaintiff with leave of the court paid said sum of \$180.00 into the registry of the court.

34 And the plaintiffs E. T. Mason & Company thereupon rested and thereupon the defendant Samaha moved the court upon the whole evidence to direct a verdict for the defendant, which motion was by the court overruled. And the defendant thereupon duly reserved an exception.

To maintain the issues on the part of the defendant Mansour Samaha, the defendant gave evidence as follows:

MANSOUR SAMAHA, the defendant, being duly sworn, testified that he has been engaged in the Oriental rug business in this country for fifteen years; in the city of Washington for eleven years; that he has also been engaged in the Oriental rug business in Atlantic City, Asbury Park and Florida; that he was present on December 8, 1903 when the marshal took the goods, under the writ issued in this case; that Mr. Lesler was there and two other men with the marshal; that

the rugs taken under the writ of replevin were witness's rugs; that a number of them witness bought from Tavshanjian, another lot from Fratz and La Rue, and another lot from Haggar Bros. & Daavid Company; forty-three of the rugs taken under the writ, were rugs that witness had had two or three years before on his hands in his Fourteenth Street store and at 1421 F street; that witness usually buys rugs wholesale, by the bale, and when he does so, he puts upon each one a number, the size and the price and then makes an entry thereof in his books so that he can keep track of every rug, and can tell the size of it, and the price, and the number; that forty-three of the rugs taken under the writ had witness's tags on them; that the stock bought from Haggar Bros. & Daavid did not have wit-

35 ness's tags on them; that at the time the goods were being taken out under the writ of replevin, witness called Barker, the man who was working for Brown and Tolson, and told him to check up and take every number and the sizes of these rugs; and when the marshal picked up one of the rugs which witness had brought from Tavshanjian three years ago, witness called to Barker to put down the number and size of it, which Barker did. The rugs that were from the stock witness bought from Haggar Bros. had no numbers on them, but every rug which witness had of the old stock, had a different number; that witness numbers the tags on his rugs in order to keep track of them; the numbers on the tags correspond with the entries in a book kept by the witness; whenever witness buys a lot of rugs he tags them and makes an entry on his books which corresponds with the tag so that by referring from the number on the tag to the corresponding number on the book, witness is able to tell the number, value and size of the rug; that witness called off the numbers of the tags on these rugs to Mr. Barker, and Mr. Barker made a statement of them.

(Witness here identified the statement, which was shown to him, as the one made by Mr. Barker at the time the goods were taken under the writ. Mr. Barker being recalled also identified the paper, and testified:)

That as the marshal took the rugs, under the writ of replevin, Mr. Samaha called off the number and sizes and witness took them down on a sheet of paper. He identified the paper shown him as being in his own handwriting, and as being the statement of the numbers and sizes of the rugs as they were called off to him at the time the rugs were taken under the writ. This statement was offered and admitted in evidence, and consists simply of a sheet of paper containing the numbers of the rugs and their respective sizes,

36 as they were called off to the witness by the witness Samaha, during the taking of the rugs. Barker further testified that during the taking of the rugs by the marshal Mr. Samaha was very much excited.

Q. Did he appear to be very much excited? A. Yes; he told the man at the time that they were rugs that he had bought from somebody else.

COUNSEL FOR PLAINTIFF: I object to anything he said.

COUNSEL FOR DEFENDANT:

Q. Now I ask you what he said while he was in this condition of excitement, induced by the taking of these rugs.

COUNSEL FOR PLAINTIFF: I object.

The COURT: As I understand this witness, he says that this plaintiff was there.

COUNSEL FOR PLAINTIFFS: No, the plaintiffs were not there. Mr. Mason was asked if he was here and he said he was not even in the city.

COUNSEL FOR DEFENDANTS: The salesman for the plaintiff firm and the attorneys for the plaintiff firm were present.

The COURT: I do not think that would come within the rule.

The defendant thereupon duly reserved an exception.

MANSOUR SAMAHA, being recalled, testified that by reference to his book, kept in the usual course of business, he would be able to tell the value of the rugs the numbers of which appear on the statement made by Mr. Barker.

Witness thereupon refers to a book which he describe as the book in which he keeps the record of the sizes and numbers of the rugs which he purchases; that every time he purchases rugs, he
37 puts the numbers, sizes and prices of them on this book; that when he buys rugs from Tavshanjian, the wholesale dealer, they all come in a bale and the whole bale will be numbered one, that is to say, there will be fifty rugs or more, and every one of them is numbered one but when witness gets them in his store, instead of leaving the rugs bearing one number, he takes off the old tags, puts on a new one, and numbers each one different; he measures the rug and puts the size and number and price on the tag, and that when he gets a bale of rugs he makes an entry in the book referred to corresponding to that which appears on the tag which he places on them.

It appearing that the book referred to is written in Arabic, Dr. Arbeely was sworn as interpreter.

Q. Will you examine that book and tell us what it is? A. Announcement of the quality of the rugs and size and price, page 79. It is considered on the 12th of August, 1903.

MANSOUR SAMAHA being again recalled testified that No. 68 appearing on the list made by Barker appears in the book referred to and that opposite the number in the book there is one rug, size 5 feet 4 inches by three feet 9 inches, \$33. That the price, \$33. indicates its value,—that the price is the cost price; that these entries in the book were made by the witness at the same time that the tags were made and attached to the rugs,—that every entry made in the book was correct. Witness then went on and read from the book,

38 numbers selected at random from the list made out by Barker, and it was found that they correspond in sizes and number to the list aforesaid. Whereupon it was agreed that the witness would testify that the entries in the book correspond in number and size to the entries on the memorandum made by Barker, and that the rugs called out by Samaha to Barker at the time of the execution of the writ were forty-three in number and that their value as shown by the entries in the book is ten hundred and fifty-seven dollars (\$1057). Samaha further testified that these forty-three rugs came from H. S. Tavshanjian of New York and witness produced the bill from Tavshanjian for one hundred and sixty-one rugs, and testified that these forty-three rugs are a part of the one hundred and sixty-one rugs purchased by him from Tavshanjian; that on Tavshanjian's bill there appear rugs known as Kazak, also rugs known as a Massoul, Shirvans, Ghenjis, Bloochistan and Tabris; that the plaintiffs attached one of witness' Tabris rugs, and that plaintiffs never had any Tabris rug on their bill to Haggar Brothers, that the value of the rugs, other than the forty-three referred to, averaged about twenty-two dollars each; that witness has been conducting business at his present place of business No. 605 14th street for about ten years, and has also had two other stores on Fourteenth street one on F street between Fourteenth and Fifteenth, and one on F street near Thirteenth. At the time the rugs were taken, he was conducting two stores, one at 605 Fourteenth street and one at 1421 F street; that he bought the stock of goods from Haggar Bros. in November, 1903, under the following circumstances:

Haggar Bros. came to this city in 1902 and opened a store on F street between Twelfth and Thirteenth, carrying the same stock of goods that witness does. They were witness' competitors.

39 They did an immense business and cut witness's trade almost to nothing. They removed from there to Asbury Park, and opened a store and the Haggars told witness they were carrying about forty-five of fifty thousand dollars worth of goods. In Nov. 1903, they came to Washington again and opened up the store at 1110 F street that witness bought out. That some time after they had come here in Nov. 1903, Haggar came to witness' place at 1421 F street, and asked him whether they would like to buy their stock. He said that they had a stock of forty-five or fifty thousand dollars' worth of goods in Asbury Park and they had been closing it out and were going into some different business. Witness said: "If it is so I will see; I may buy." Haggar came a second time and asked witness the same thing, and witness and Haggar went over the goods. They went over the goods for four or five days, and finally agreed on a price and made up an itemized list of every article. Witness went to Mr. Ralston's office with the Haggars and got him to make the bill of sale. The bill of sale was executed in Mr. Ralston's office and sent by Mr. Ralston to be recorded and witness then went to his store on 14th street with the Haggars and paid them the purchase money and he then took possession of the place and advertised the

place in the Star newspaper. The price agreed upon was ten thousand, six hundred and seventy-nine dollars (\$10,679.) and some cents, which witness paid to Haggar Bros. and Daavid. Witness received a bill of sale for the goods, which, with the inventory referred to, was offered in evidence and is as follows:

40 "Liber 2792, Folio 41.

N. E. Haggar *et al.* to M. Samaha.

Recorded November 30th, 1903—1—43 p. m. Bill of Sale.

This indenture, made this thirtieth day of November, A. D., 1903, by and between N. E. Haggar, S. E. Haggar, and F. S. G. Daavid, trading as Haggar Brothers and Daavid Company, and Nazira Haggar, wife of N. E. Haggar of Washington, D. C. parties of the first part, and M. Samaha, of the same place, party of the second part,

Witnesseth, that the said parties of the first part for and in consideration of the sum of ten thousand, six hundred and seventy-nine and 60/100 (10,679.60) dollars, to them in hand paid, have bargained, sold, assigned conveyed and delivered, and by these presents do bargain, sell, assign, convey and deliver unto the said party of the second part, his heirs and assigns forever, all that certain stock of goods contained in premises numbered 1110 F street northwest together with rugs, crockery, etc., belonging to the parties of the first part contained in the auction rooms of Brown and Tolson on H street, between Fourteenth and Fifteenth streets, northwest, and the good-will of their business at said premises No. 1110 F street, northwest, together with all the shelving, fixtures, lease, electric lights and wiring, and all and singular the other articles contained upon the premises No. 1110 F street northwest, now occupied by the parties hereto of the first part; the articles hereby conveyed being more fully indicated by the inventory thereof executed this day.

41 Witness the hands and seals of the parties hereto of the first part, the day and year first above named.

N. E. HAGGAR.	[SEAL.]
S. E. HAGGAR.	[SEAL.]
F. S. G. DAAVID.	[SEAL.]
NAZIRA HAGGAR.	[SEAL.]

Name of M. E. Haggar in 1st. line changed to N. E. Haggar.
 Name of F. S. G. Daavid in 2nd. line changed to F. S. G. Daavid.
 Name of M. E. Haggar in 4th line changed to N. E. Haggar.
 All changed before execution.

D. F. H.

Witness:

D. FULTON HARRIS.

DISTRICT OF COLUMBIA, 88:

I, D. Fulton Harris, a notary public in and for the District of Columbia, do hereby certify that N. E. Haggar, S. E. Haggar, F. S. G. Daavid and Nazira Haggar, wife of N. E. Haggar, parties to a certain deed bearing date on the thirtieth day of November, A. D. 1903 and hereto annexed, personally appeared before me in said District the said N. E. Haggar, S. E. Haggar, F. S. G. Daavid and Nazira Haggar being personally well known to me as the persons who executed the said deed and acknowledged the same to be their act and deed.

Given under my hand and seal this thirtieth day of November, A. D. 1903.

[NOTARIAL SEAL,] D. FULTON HARRIS,
Notary Public, D. C.

42 DISTRICT OF COLUMBIA:

OFFICE OF THE RECORDER OF DEEDS, *Dec. 11th, 1903.*

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 2792, folio 41, one of the land records of the District of Columbia.

R. W. DUTTON,
Deputy Recorder of Deeds, District of Columbia.

43	32 pieces of china, Moriagi, Etzuma handpainted & awaji (in lots).....	\$58.70
	8 sets of sugars & creamers.....	6.00
	38 pieces of china with 5 tea sets & 3 chocolate sets	89.00
	25 pieces Damascus wood furniture, @ 9.00..	225.00
	10 lacker trays.....	7.95
	9 smoking sets, @ 2.50.....	22.50
	4 Emary bowls, 7.50.....	30.00
	676 pieces of Japanese china, Austrian, German, & French china, terra cotta figures Deutch & R. Etzuma.....	559.75
	2 china sets, @ 8.00.....	16.00
	3 antique brass wood boxes, 13.00.....	39.00
	3 brass lamps, 12.00.....	36.00
	5 Benaris brass jardenie-rs, 4.00.....	20.00
	6 fish sets, 2 22.50 & 4 25.00.....	145.00.
	4 satine screens, 11.00.....	44.00
	3 silk " 25.00.....	75.00
	1 bronze lamp, 18.00.....	18.00
	8 lamp shades Venecian glass, 12.00.....	96.00
	1 large Satsuma vase.....	45.00
	1 cloisenne vase large.....	60.00
	2 Kaga punch bowl, 35.00.....	70.00

1 Vienna vase.....	15.00
8 clocks, 2.50.....	20.00
1 brass umbrella jar.....	7.00
4 " Damascus lamps filigree & vase, 6.50...	26.00
2 bronze Kora & vase, 10.00.....	20.00
2 " " 16.00.....	32.00
1 Satsuma vase.....	17.00
1 temple gong large size.....	15.00
4 bronze vases, 25.00.....	100.00
4 ivoryine swords, 2.50.....	10.00
8 ivory carvings, 5.00.....	40.00
1 " bridge.....	27.50
1 set gongs.....	5.00
6 ivory carvings, 12.50.....	75.00
6 Cloisenna pieces, 4.50.....	27.00
38 Shirvan rugs, @ 15.00.....	570.00
3 Anat. mats, 1.65.....	4.95
6 Iran rugs, 22.00.....	132.00
7 Belouchestan rugs, 15.00.....	105.00
11 Kazak " 18.00.....	198.00
1 Sereband rug.....	26.00

Carried forward..... 2,134.35

44

Brought forward..... 2,134.35

2 Gerevan rugs, 15.00.....	30.00
2 Cashmere rugs 12.00.....	24.00
3 Farahan " 15.00	45.00
1 Iran "	20.00
1 Tabriz "	45.00
1 " "	45.00
2 Iran " 20.00.....	40.00
2 Kirmashah " 55.00.....	110.00
4 Sena " 55.00.....	220.00
1 Iran " 25.00.....	25.00
4 Serraband " 20.00.....	80.00
9 Iran & Moursol rugs, 29.00.....	261.00
15 Sheeraz " 12.00.....	180.00
24 Shirvan " 13.00.....	312.00
13 Royal Princess Bokhara rugs, 22.00.....	286.00
1 Farahan rug, 20.00.....	20.00
1 Gerevan carpet, 190.00.....	190.00
1 Mashad " 175.00.....	175.00
1 Afgan " 65.00.....	65.00
7 Belouchestan rugs, 8.00.....	56.00
12 " " 12.00.....	144.00
21 " " 15.00.....	315.00
6 Anatolian mats, 1.65.....	9.90

17 Kazak & Iran rugs,	25.00	425.00	
22 " " "	17.50	385.50	
10 Cabistan	12.00	120.00	
9 Cabistan	14.00	126.00	
7 Shirvan	8.00	56.00	
3 Sena	40.00	120.00	
3 Iran	22.00	66.00	
5 Kazak	18.00	90.00	
1 camel's hair	22.00	22.00	
			4,107.90
4 doz. shawls, 12.00		48.00	
6 ivorine Jap. swords		6.00	
72 pieces of cloisenne		119.50	
5 ivory crabs		37.50	
72 pairs Damascus stripes hangers		125.00	
20 Bagdads		49.75	
28 E. I. prints, assorted		26.00	
56 ivory carvings		250.00	
71 royal Satsuma		167.00	
1 doz. Caga plates		10.00	
7 Vienna vases		24.50	
4 gongs		2.25	
6 ink stands		3.75	
8 couch covers		34.00	
4 champaign sets		5.00	
9 lacker boxes		6.00	
			914.25
Carried forward			7,156.50
Brought forward			\$7156.50
2 bracelets		.60	
9 G. M. chains & others		20.75	
38 gold and G. M. brooches		95.00	
3 E. India cushions		2.25	
18 Jap. swords ivorie		8.00	
12 cups and saucers		5.00	
26 brooches, gold and gun metal		63.50	
17 G. M. chains		39.50	
6 10 K. gold watches		45.00	
3 gun metal watches		17.25	
10 clois. silver vases			
4 ivory carvings }		109.00	
9 silver chains		12.75	
58 silver clois. vases & boxes		387.75	
			806.35
50 fob chains			
53 brooches & sash pins } lot		112.00	
3 cigarette cases			

2 daggers.....	13.00	
L dagger.....	1.50	
1 pair pistols.....	4.50	
2 Baltat.....	2.50	
3 drawn work shirt waists.....	19.50	
19 cushions	38.30	
1 mozaik cape.....	9.00	
6 doz. fob chains.....	11.30	
12 ox. & enamel- bracelets.....	3.25	
6 cuff buttons.....	1.50	
25 shades Venecian glass.....	125.00	
1 Etquma choc. set.....	13.00	
1 Flaga bowl.....	30.00	
		384.35
2 Flaga bowl.....	32.00	
27 plaster Paris figures.....	27.00	
21 Damascus taborets, small & large.....	97.00	
5 chairs	40.00	
1 silk screen, embd. teak frame.....	40.00	
1 silk screen emb. fire red teak.....	45.00	
1 silk screen lacker frame.....	20.00	
14 linen screens	74.00	
60 clocks, large & small, 1.50.....	90.00	
7 onyx tables	11.00	
2 musical steins	10.00	
45 1 picture frame, wood & pearl.....	2.00	
13 sets gongs, 2.00.....	26.00	
1 vase bronze.....	3.00	
1 vase terra cotta.....	1.00	
1 vase bronze.....	8.50	
8 ivory swords, .50.....	4.00	
		530.50
Carried forward.....		8877.70
Brought forward.....		8877.70
7 smoking sets, 1.00.....	7.00	
92 kimonos.....	110.00	
36 cushions tops Devaal & others.....	40.00	
84 shawls, large & small.....	93.00	
14 embr'd silk shawls, Japanese.....	43.00	
1 Chinese coat.....	12.50	
11 Fulgaria & Bagdad & India.....	31.00	
11 couch covers, assorted, 2.50.....	27.50	
5 walking sticks, assorted.....	25.00	
5 Bagdad mosque 3.25.....	16.25	
27 E. India prints, 1.00.....	27.00	
3 doz. picture cushion tops.....	3.75	
1 cape Turkish.....	7.50	

3 field glasses, 3.00.....	9.00	
1 opera glass with handle.....	3.50	
100 precious stones.....	25.00	
3 Nesuky bags.....	5.25	
		486.25
14 doz. high grade plates, Austria & Japanese & French.....	122.00	
21 doz. lower grade plates, Austria & Japanese & French, 2.00.....	44.00	
1 doz. coral chains.....	5.00	
4 toilet sets, cloisonne, 3.00.....	12.00	
8 pairs Damascus draperies, 1.10.....	8.80	
36 wire purses.....	3.50	
15 dozen linen napkins.....	21.00	
45 dozen scarves.....	22.50	
7 brass jardinieres.....	10.50	
5 antique lamps, 4.50.....	22.50	
4 brass vases, hand hammered.....	4.00	
1 brass umbrella jar.....	5.50	
1 Kaga vase.....	7.50	
		295.80
3 Vienna vase-, 7.50.....	22.50	
12 brass vases, hand hammered.....	10.00	
1 bronze vase.....	10.00	
2 brass vases & lamps & figures.....	33.00	
17 China boxes.....	30.00	
3 musical clocks.....	18.00	
1 Arab sword.....	15.00	
4 daggers, Damascus, 8.00.....	32.00	
5 Vienna sets (miniature), 5.00.....	25.00	
1 Vienna choc. set.....	25.00	
4 China sets, 6.00.....	24.00	
4 fish set cases.....	18.00	
7 game sets & fish sets.....	70.00	
2 cloisonne jardinieres.....	12.00	
16 doz. cups & saucers, 2.00.....	32.00	
		376.50
Carried forward.....		10036.25
Brought forward.....		\$10,036.25
1 Japanese hat.....	.75	
2 pairs Tabaujat.....	6.00	
1 Arab's fid-le.....	2.00	
4 Tabauja large gun.....	12.00	
39 clois. vase & tea pots.....	45.00	
11 Wisemen vases, gilted.....	12.00	
20 Vienna fruit dishes.....	19.00	
17 clois. vases, small.....	11.50	

2 ivory carvings.....	5.00	
3 Satsuma vases antique.....	7.50	
56 Vienna vase- large & small.....	133.00	
36 Napoleon's plates.....	12.00	
2 fish sets, 17.00.....	34.00	
6 Vienna placques.....	19.00	
70 plates assorted.....	20.00	
2 Vienna placques extra fine.....	40.00	
1 " " med.....	9.00	
1 bronz- lamp.....	50.00	
		417.75
30 draperies on the wall.....	18.00	
3 tapestries.....	12.00	
7 necklaces & chains coral .75.....	5.25	
15 chains gun metal & silver with black pearl..	22.50	
11 pearl chains, .75.....	8.25	
26 brooches in boxes G. M., silver & others...	13.00	
48 brooches coral, silver & mozaik, .50.....	24.00	
2 charms, lockets, gilted, 1.00.....	2.00	
61 pieces gun metal, silver & ox. 85 assorted kinds	51.85	
1 silver chatelain purse.....	3.00	
1 necklace, pearl with stones.....	1.75	
1 " coral " "	9.00	
1 show case.....	5.00	
46 Store fixtures, shelving, 32.50; ladder, .50; two hammers, .75; saw, 1.00; 4 chairs, 3.00; easle, .50; nail puller, .75; electric wiring, 9.00.....	48.00	
Lot of empty barrels & boxes.....	4.00	
		225.60
		<u>\$10,679.60</u>

Received the sum above named for goods, &c. above inventories.
Washington, D. C., Nov. 30, 1903.

HAGGAR BROS & DAAVID CO.,
Per F. S. G. DAAVID.
N. E. HAGGAR.

47 The consideration was paid at witness's store, 605 Fourteenth street in the presence of Mr. Hagggar, his brother, Mr. Daavid and Mrs. Hagggar. Witness took also an assignment of the lease of the place and took possession of the stock, store and everything. After he got possession of the store he closed up the store at 1421 F street, brought all the rugs he had there, down to the store at 1110 F street, and put them with the stock he had just bought; that witness held an exhibition of the goods in the store for a week advertised them for sale the following week. The following week, he held

auction sales. Witness paid for the stock in cash; there were three (3) bills of one thousand dollars (\$1000.) each, some five hundred dollars (\$500.) bills and some one hundred (\$100.) bills.

On cross examination witness further testified that he came to this country in 1887 and went into business in Atlantic City in 1896 and also had had a store in Asbury Park. That the money he paid Haggart Bros. for their stock was the fruits of his labors in merchandising and palm reading as well as the capital of his business. His store at 605 Fourteenth street was about 15 x 30 feet. He kept this money in a small Victor safe in that store. The safe cost about forty or fifty dollars. In January and February, 1903, he had about one thousand dollars in the safe. In May, June, July and August of the same year he had about three thousand dollars in the safe. The increase of about \$2,000 was the proceeds of the sale of his merchandise. During the summer months his stock of merchandise had run down to less than \$5,000 worth. In November, when he went

48 to New York he had about \$6,000 in his safe, the increase being the proceeds of the sale of his merchandise in stock during September, October and November. During the year 1903

he had two bank accounts, one with Riggs national bank and one with the American national bank but he only kept small amounts in bank as he considered his safe the safest, he didn't believe in banks. Nobody remained in his store during the night and when he went to New York on November 8 to buy rugs, he left the \$6,000 in the safe. He borrowed \$4,000 from M. M. Maloof in New York under the following circumstances. He went to New York November 8 with the intention of attending an auction sale of the rug stock of Tavshanjian & Co., he went to the sale Monday morning November 9 and bought rugs to the amount of about \$2,300; that evening he stopped at the Stevens house where his friend Maloof lived. He saw Maloof and asked him to lend him four thousand dollars. That Maloof agreed to lend it to him the next morning. That early the next morning witness and Maloof left the hotel and took breakfast at Maloof's store; that Maloof said he would send to the bank for the money; that witness went out on an errand and when he returned Maloof took the money from his safe and counted out \$4,000 to him; that witness gave Maloof his note for the money, paid interest only at the rate of six per cent. per annum and gave no security for the note. Witness went to Tavshanjian and offered to pay him for the \$2,300 worth of rugs he had bought and Tavshanjian "liked me very much and he said, 'No, I will give you these goods on sixty days' time and send you the bill to Washington.' Witness then took the money back to Maloof but he would not accept it; he wanted the interest. Witness therefore brought the money to Washington and put it in his safe with his \$6,000 and thus made up the \$10,000 he paid to Haggart Bros. Before he went to

49 New York witness had received a catalogue of the Tavshanjian sale on which it was announced that the terms of sale would be cash. Witness further testified that he never kept

any books of account for his rug and Oriental goods business. He only kept a book containing a list of his rugs; that when he made sales he made no entries and had no record of his business. When he made a sale he put the money in his safe. Witness could write English, but some one has to spell out the heavy words for him. The note he gave to Maloof was on a printed blank, the written portions were in witness's handwriting and Maloof's bookkeeper spelled out some of the words to witness; Witness and Haggar Bros. & David spent four or five days going over the stock in detail and then on the last day they made the inventory with the prices and it added up \$10,679.60 and witness paid that exact price without further negotiations or deductions. The original inventory was in the handwriting of Mr. Daavid. The only persons who were present in the store when witness paid the \$10,679.60 besides the Haggars, Mrs. Haggar and Daavid was witness's wife, but she was waiting on a customer in another part of the store and did not see the money counted out. The Haggar Brothers are now in this city. Witness did not ask Haggar Bros. & Daavid to let him examine their books, he didn't pay attention to them, he did not ask them to let him see their bills, or ask them if any of their stock was consigned to them nor ask if the goods were paid for; he did not make any investigation to see if there was a chattel-mortgage on the stock and did not ask them whether their business had been good or bad. Witness never suspicioned them and did not ask them why they wanted to sell out so soon he was only too glad to get the place. Tabriz rugs and Kirmineha rugs are Persian rugs. The marshal took a Tabriz

50 rug and witness did not buy any Tabriz rugs from Haggar Bros. & Daavid Co. There were none in their lot at all.

On redirect examination witness further testified that the four thousand dollars (4,000.) lent him by Maloof was drawn out of bank by Maloof's check; that witness saw the check signed by Maloof under the following circumstances: when witness asked Mr. Maloof for a loan of money, Maloof asked him how much, "four or five thousand dollars?" Witness said "Four thousand dollars." It was then early in the morning. Witness and Maloof left the hotel at which they were stopping and they took breakfast at Maloof's store. During breakfast Maloof took his check book, and drew out this check (referring to a check dated November 10, 1903, payable to the order of bearer, signed by N. N. Maloof, treasurer, with the perforation "Paid" through it) and handed it to his man to be cashed and said: "The cash will be here soon after breakfast." Witness went out on an errand to buy some goods, and when he returned, saw the money drawn out from Maloof's safe. Maloof handed witness the money and witness made out the four thousand dollar (\$4,000) note.

And thereupon, counsel for defendant Samaha offered the check in evidence, to which counsel for the plaintiff objected and the court sustained the objection, on which action of the court, the defendant Samaha duly reserved an exception.

And thereupon, Dr. ARBEELY was recalled and being duly sworn

as a witness, testified that he has known the defendant Samaha for ten or twelve years, and that he has frequently seen large sums of money in Samaha's place of business, in his safe. He also testified that he and Samaha are of the same race, and that it is not customary among Syrians to keep their money in banks, but to
51 keep it in coin or currency about their persons.

And thereupon JAMES R. ELLISON, a witness on behalf of the defendant Samaha, after being duly sworn, testified that he is in the real estate business and leased the store to Samaha which he is now occupying and collects the rents; that he always paid the rent in cash and got the money either from his pocket or his safe. Witness remembers when Samaha was occupying 1421 F street and recalls the fact that Samaha removed a large number of Turkish rugs from that store to a store down on F street, between Eleventh and Twelfth streets.

And thereupon, O. L. PITNEY, a witness on behalf of the defendant, being duly sworn, testified that he has known Samaha for twelve (12) years and rented him a store at 1305 F street and had always received the rent in cash.

And thereupon the defendant rested.

The plaintiffs then offered and gave the following testimony in rebuttal:

ELMER W. RAINER, being recalled, testified that when the goods were replevied, they were taken to the marshal's office and that the value of the rugs was twelve hundred and some odd dollars.

And thereupon, WATSON B. MILLER, being duly sworn, testified that he was an Oriental rug merchant, and has been engaged in that business fifteen years; that in December 1903, he was employed by W. B. Moses & Sons and he examined a stock of rugs represented to him as having been taken from the stock of Haggard Brothers and Daavid Company, 1110 F street, northwest, then stored at Ratcliffe's ware-rooms at 918 Penna. Ave. N. W., and that in
52 his opinion, they were worth one thousand (\$1,000.) or eleven hundred (\$1,100.) dollars net.

On cross examination, witness testified that the rugs examined by him included Khadistans, Shirvans, Afghanistans, Baluchistans; also six or seven Tabris rugs. The Tabris rugs averaged in size, twenty-eight square feet. There were also about the same number of Kerminsha rugs there. That Tabriz and Kirmansha rugs are Persian rugs.

And thereupon, JOSEPH A. BURKHART, a witness on behalf of the plaintiff, being duly sworn, testified that he is a member of the bar of the supreme court of the District of Columbia; that in May, 1903, he had in his hands for collection, a claim against the defendant Sa-

maha, amounting to ninety-five dollars and seventy-five cents (\$95.75); that Samaha told him, when he presented the matter to him that he was unable to pay it, but would pay it later; he demanded payment several times during the summer, but Samaha asked for time & said he could not pay as business was dull. Witness collected the claim about the middle of August, and received payment by a check, which he required Samaha to have cashed before he gave him a receipt.

On cross examination he testified that the claim referred to grew out of a long litigation between Abraham Samaha, and the defendant Samaha, lasting nearly four years, and that there is a great deal of feeling between the parties, and that the defendant Samaha claimed that he did not owe Abraham Samaha anything, notwithstanding the judgment.

And thereupon, the defendant SAMAHA, called as a witness on behalf of the plaintiffs, identified his signature to a tax return made by himself under oath on the eighteenth of July, 1903, giving
53 the valuation of his stock in trade as five hundred dollars (\$500.), fixtures, supplies, etc., one hundred dollars (\$100.) making a total of six hundred dollars (\$600.) at the top of the front page of which appear the words "Rejected, \$1100."

On cross examination he testified that the paper was signed under the following circumstances:

That a man came to his store and told him to sign his name for the return. Witness signed his name, but did not fill out the paper. The writing in the body of the paper is not that of witness. The figures on the paper were on it at the time that witness signed it. Witness did not know what the contents of the paper was, but the man who brought it said it was the same as the last year's return, and witness did not know anything about it. After the return was made a couple of gentlemen came to witness's store, and appraised the goods, and a month or two after that, the rejection bill came to witness's store and witness accepted it.

PATRICK F. CUSICK, a witness on behalf of the plaintiff, being first duly sworn, testified that in December, 1903, he was one of the deputies of the marshal's office and executed the writ of replevin on these goods, removed the rugs to 1110 F street, northwest to Ratcliffe's auction room, and placed them in the second floor front room. Witness made an arrangement to meet somebody from Moses's to go down there and examine them, which was done. Witness cannot recall the name of the person or persons who examined them.

On cross examination, he testified that at the time the rugs were taken, he remembers seeing a Mr. Barker in Samaha's store. Witness saw Mr. Barker make a list of the number and sizes of the rugs at Samaha's request.

54 And thereupon, HARRY L. BARKER, being recalled on behalf of the plaintiff in rebuttal, testified that he had a conversation with Samaha in December, about the time this suit was instituted and in the course of the conversation Samaha said something to the effect, in a joking sort of way that:

"If you could get \$20,000 stock for \$10,000 or \$15,000 would you buy it" or something like that. Witness could not remember the exact words. Witness did not see the inventory that was made by the Haggars and Samaha, and witness is unable to say whether or not Samaha saw the record of the sales made by Haggar and kept by witness. The book was there so that anybody could see it.

And thereupon the plaintiffs rested.

Whereupon, MONTAGUE LESLER, being recalled in behalf of the defendants in sur-rebuttal, testified that he saw one of the Haggars the night before and Mr. Rainer was there; that he had a talk with Mr. Haggar and was not going to produce him as a witness in this case. Witness further testified that he is one of the counsel for the plaintiffs in this case.

The foregoing was all of the evidence submitted by the respective parties.

Thereupon the plaintiffs prayed the court to grant, and the court, over the objections of the defendants, granted the following prayers for instructions to the jury, and the defendants duly excepted to the action of the court in granting the first of said prayers:

1. The jury are instructed that if Haggar Brothers and
55 Daavid Company purchased the merchandise involved in this suit from the plaintiffs on credit or for part cash and partly on credit with the intent to defraud the plaintiffs out of the purchase price or the part thereof for which credit was given, such purchase was fraudulent and the plaintiffs had the right to rescind said sale when they discovered such fraud, and they had the right to retake said merchandise in this action if such merchandise had not passed into the hands of a purchaser for a valuable consideration without previous notice of the fraudulent intent of his immediate grantor, provided that before the institution of the suit they tendered to said Haggar Brothers and Daavid Company or a member of the firm, the money paid on account of said purchase or offered to make such tender, and shall further find that the said defendant declined said tender because they had sold and conveyed the goods in question, then you may find from such facts that the actual tender of said money was waived.

2. The jury are instructed that in determining whether the defendant Samaha had previous notice of the fraudulent intent on the part of Haggar Brothers and Daavid Company, in their purchase from the plaintiffs and their sale to him, actual knowledge by said Samaha is not essential. But if the jury believe from all the evidence that there was such facts as to excite suspicion on the part of the de-

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fendant Samaha the law will not permit him to shut his eyes, but imposes upon him the duty to look about him and inquire; whatever is notice enough to excite attention and put the party purchasing on his guard and call for inquiry is also notice if such inquiry is not made of everything to which it is afterwards found that such inquiry might have led; if the jury believe from the evidence that the
56 defendant Samaha had sufficient information to lead him to a fact, he must be deemed conversant with it; and if the facts observed or within the knowledge of the defendant Samaha were such as to awaken suspicion and lead a man of ordinary prudence to make inquiry and he failed to make such inquiry, then he is chargeable with notice of any fraudulent intent on the part of the seller and with participation in the fraud.

4. The jury are instructed that to establish fraud it is not necessary to prove it by direct and positive evidence, but it is a subject for legitimate inference from facts disclosed by the evidence; circumstantial evidence is not only sufficient but may be the only proof that can be adduced; and in this case it is not necessary for the plaintiffs to prove a fact or circumstances which singly and alone is conclusive evidence of fraud, nor to prove by direct and positive evidence that the purchase from the plaintiffs was fraudulent on the part of Haggar Brothers and Daavid Company, and that the defendant Samaha had notice of their fraudulent intent, if the jury find that they had such intent; but it is sufficient if the evidence in the case shows such facts and circumstances tending to that conclusion, as, by their presence together, may reasonably induce the jury to believe that said Haagar Brothers and Daavid Company did have such intent and that said Samaha had notice thereof as notice has been defined by the court.

5. The jury are instructed that if they find that any witness has knowingly and willfully testified falsely in this trial, as to any material fact in controversy, they are at liberty to reject all or any part of his testimony; but they are not bound to do so, but may
57 give it such weight as they think it is entitled to. The credibility of the witnesses and the weight and effect of their testimony is exclusively within the province of the jury, in determining which they may consider the demeanor and apparent candor and intelligence of the witnesses while testifying; their interest or want of interest in the result of the suit; and all the other facts and circumstances in the case.

6. The jury are instructed that they are not bound to believe what a witness has testified to simply because no other witness has contradicted it. But in determining the weight to be given to such testimony they may consider its probability or improbability, and if deemed by the jury improbable or irreconcilable with facts admitted or established to their satisfaction so as not to be believed by the jury, they may disregard it.

Thereupon the defendants prayed the court to grant, and the court granted the following prayers for instructions to the jury:

4. The jury are instructed that the plaintiffs must recover on the strength of their own title and right to possession and not on the defendants' lack of title and right to possession and the burden of showing title in the plaintiffs rests upon them, and unless the plaintiffs show title and right to possession in themselves at the time this action was commenced, they cannot recover.

5. If the jury find from the evidence that the plaintiffs sold and delivered the goods in controversy to the defendants W. E. Haggar, S. E. Haggar and F. S. G. Daavid on credit, the mere fact that all of the purchase money was not paid would not deprive the defendants of their right of possession and ownership of said goods.

58 6. The jury are instructed that unless the plaintiffs show by a fair preponderance of the evidence that the rugs taken under the writ of replevin issued in this case are some part of the identical rugs sold by the plaintiffs to the defendants Haggar Bros. and Daavid, their verdict must be for the defendant Samaha, and that if they find from the evidence that some of the rugs taken under said writ were sold by the plaintiffs to the defendant Haggar Bros. and Daavid and some were not, their verdict must be for the defendant Samaha as to so many of the rugs as they may find were not sold by the plaintiff to the defendant Haggar Bros. and Daavid even though they find that other of said rugs were obtained from the plaintiffs fraudulently.

7. The jury are instructed as a matter of law that the legal effect of the contract between the plaintiffs and the defendants Haggar Bros. and Daavid as shown by the letters and correspondence passing between said plaintiffs and said Haggar Bros. and Daavid Co. and introduced in evidence, was to vest the title to the rugs referred to in said correspondence in said Haggar Bros. and Daavid Co. and that unless the plaintiffs before this suit was commenced rescinded said contract of sale, they cannot recover and the verdict must be for the defendants.

9. The jury are instructed that parties to a business transaction are not presumed to deal with each other in bad faith, but, on the contrary, are presumed to deal honestly and in good faith until the opposite is shown by the evidence upon the trial; and any one who alleges that acts are done in bad faith, or for a dishonest or fraudulent purpose, takes upon himself the burden of showing that such is the case. In other words fraud is never presumed, and it
59 devolves upon him who alleges fraud to show the same by satisfactory proof.

10. The jury are instructed that the fraud to vitiate or affect the title of the defendant Samaha in this case if they find any fraud in the case, must be a fraud perpetrated upon the plaintiffs by the defendants Haggar Bros. and Daavid at or prior to the time said Haggar Bros. and Daavid purchased the goods in controversy from the plaintiffs and perpetrated by them in order to obtain said goods from the plaintiffs; that the plaintiffs claim here as owners of the goods in controversy and not as creditors of said Haggar Bros. and

Daavid Co. and that even should they find that the conveyance subsequently made by Haggar Bros. and Daavid to Samaha was made for the purpose of hindering, delaying or defrauding their creditors, the plaintiff- cannot complain of it, and the jury are not to consider as affecting the right of the defendant Samaha to a verdict, any fraud committed by the defendants Haggar Bros. and Daavid Co., not relating to the purchase of said goods from the plaintiffs, though they may take into consideration in determining whether or not said Haggar Bros. and Daavid Co. obtained said goods from the plaintiffs by false or fraudulent representations or statements or in determining whether said goods were obtained from the plaintiffs by the defendants Haggar Bros. and Daavid Co. with an intent then existing on their part never to pay for them, all of the facts and circumstances in the case including the conveyance from said Haggar Bros. and Daavid Co. to said Samaha.

11. If the jury find from the evidence that the rugs in controversy were sold and delivered by the plaintiffs to the defendants Haggar Bros. and Daavid, and that at the time of said sale and delivery there was no understanding or agreement between said parties whereby the title to said rugs should not pass to said Haggar Bros. and Daavid and that said Haggar Bros. and Daavid sold and delivered said rugs to the defendant Samaha for a valuable consideration before the commencement of this suit, their verdict must be for the defendant Samaha, unless they further find, by a fair preponderance of the evidence:

First. That said sale was induced by some false and fraudulent statement or representation made by said Haggar Bros. and Daavid Co., to said plaintiffs, or

Second. That said Haggar Bros. and Daavid Co. bought said rugs from the plaintiffs with the intention then existing on the part of said Haggar Bros. and Daavid Co. never to pay for them; and that the defendant Samaha had notice or knowledge of said false and fraudulent statements or of said intent on the part of said Haggar Bros. and Daavid Co. or knowledge of such facts as would excite the suspicions of a man of ordinary prudence and put him on inquiry, which if followed up, would lead to a discovery of the fraud perpetrated by said Haggar Bros. and Daavid Co. upon said plaintiffs. That the representations or statements made by Haggar Bros. and Daavid Co. to the plaintiffs, must in order to render the sale from the plaintiffs to the defendants, Haggar Bros. and Daavid Co. voidable, be shown to have been false at the time they were made, must refer to a condition existing at the time the representation is made or a condition existing previously thereto, must be material to the subject of the contract, must have been made with knowledge of its falsity or without belief in its truth, and with the intention that it be acted upon by the plaintiffs in making the sale. That the intention never to pay in order to render the sale voidable must be an intention existing at the time of the sale or a preconceived

intention not to pay at all and not merely an intention not to pay according to the contract, or not to pay when due.

12. The jury are instructed that even should they find that the defendants Haggar Bros. and Daavid bought said rugs from the plaintiffs by fraudulent and false representation or with an intent on their part never to pay for them, their verdict must nevertheless be for the defendant Samaha if they further find that said Samaha bought said rugs from said Haggar Bros. and Daavid Co. and paid them a valuable consideration therefor and that at the time said Samaha bought and paid for said rugs he had no knowlegde of the (*alleged*) fraud practiced upon the plaintiffs nor of any fact which would excite the suspicions of a man of ordinary prudence and which if pursued would lead to a discovery of the fraud.

Thereupon the defendant- prayed the court to grant the following prayers for instructions to the jury, and the court refused to grant the same, and to the action of the court in refusing to grant each and every of said prayers, the defendant duly excepted:

1. The jury are instructed to return a verdict for the defendants.

2. The jury are instructed to return a verdict for the defendant Samaha.

8. If the jury find from the evidence that the rugs in controversy were sold and delivered by the plaintiffs to the defendants Haggar Bros. and Daavid and that at the time of the said sale and delivery there was no agreement or understanding between said parties whereby the title to said rugs should not pass to said Haggar Bros. and Daavid, and that said Haggar Bros. and Daavid Co. paid on account of said rugs the sum of eight hundred (\$800.) dollars; and that the plaintiffs have not at any time prior to the commencement of this suit made an unconditional tender or offer to return said eight hundred (\$800.00) dollars their verdict must be for the defendants.

Thereupon, after counsel for the respective parties had addressed the jury, the court charged the jury as follows:

This is a case, gentlemen, that in some features is a little involved as to the character of the verdict which you might render, there being, as you have heard from the discussion between court and counsel several kinds of verdicts which you might render. Perhaps you have already grasped the law of the case.

The plaintiff in this case has replevied certain rugs from the defendants which the plaintiff claims were secured from him—meaning the firm—by some of the defendants in this case. I shall hereafter call the defendants “Haggar Brothers” without differentiating them from the other defendant Samaha, so that you will not misunderstand me when I use that term hereafter.

As I have said, the plaintiffs claim that Haggar Brothers came to them to buy certain goods at a certain price, and paid \$800. on the purchase money which was the sum of \$1900.; that when they bought those goods they then intended to perpetrate a fraud upon the plaintiff by not paying the balance that was due on those goods; that subsequently Haggar Brothers sold those

goods to the defendant Samaha, in this case, and that the said sale was a part of the fraud which the defendant Haggar Brothers had intended to perpetrate when they bought those goods from the plaintiff; and that when the plaintiff discovered the fraud, if you shall find there was a fraud, that they cancelled the entire transaction. If you shall find that when they saw Haggar after having discovered the fraud—assuming that there was fraud; because if there was no fraud in this case between Haggar and the plaintiff that ends the case and you need not go any further in your consideration of it—that as soon as the alleged fraud was discovered, they thereupon, as I have said, rescinded the sale and said to Haggar Brothers that they would rescind the sale and tendered or offered to give them back the money and that Haggar Brothers stated that they could not give the goods back because they had disposed of them, that would make out a complete case of fraud against the Haggar Brothers up to that instant, which would entitle the plaintiff in this case to rescind that sale that they had made to Haggar Brothers, of those rugs. So that if you find those facts, that settles the one part of the case.

I have said that if you should find there was no fraud in that sale between Haggar Brothers and the plaintiff, that ends the case; because they would not have any right to rescind the sale. In that event, that would end the case, and you would have to go no further, but would render your verdict for the defendant.

But if you should find that there was fraud on the part of Haggar Brothers as against the plaintiffs, then you would have to go a step further, and find the further fact that the defendant Samaha
64 became subsequently a party to that fraud, either by not paying the money which he asserts he paid, or by having gotten the goods for some ulterior purpose—the purpose of defrauding the plaintiff in other words—or, if that is not the case, that when he bought these goods, if he did buy them and paid this \$10,000. and odd dollars, that there existed such evidences of suspicion as would have put a reasonably prudent man under like circumstances upon inquiry, which inquiry, if pursued, would have shown or developed that there was fraud on the part of Haggar Brothers in their dealing with the plaintiffs in this case, and that they intended to defraud the plaintiffs when they bought these goods.

That is as plain a statement as I can make, gentlemen, of the general propositions in the case.

I ought to say to you that it is difficult always, I take it, to prove fraud by actual, positive testimony. Proof of fraud is largely arrived at by circumstances. Therefore it is your duty in this case or in any case, to look at all the circumstances in the case, and then arrive at your conclusion as to whether or not there is fraud, from a consideration of all the facts and circumstances which have been brought out in the evidence.

That being the general rule, I will now read you the prayers, which will perhaps illustrate this a little more clearly—and perhaps not.

“The jury are instructed that if Haggar Brothers and Daavid Company purchased the merchandise involved in this suit from the plaintiffs on credit or for part cash and partly on credit with the intent to defraud the plaintiffs out of the purchase price or the part thereof for which credit was given such purchase was fraudulent and the plaintiffs had the right to rescind said sale when they
65 discovered such fraud, and they had the right to retake said merchandise in this action if such merchandise had not passed into the hands of a purchaser for a valuable consideration without previous notice of the fraudulent intent of his immediate grantor, provided that before the institution of this suit they tendered to said Haggar Brothers and Daavid Company or a member of the firm, the money paid on account of said purchase or offered to make such tender, and shall further find that the said defendant Haggar Brothers declined said tender because they had sold and conveyed the goods in question, then you may find from such facts that the actual tender of said money was waived.”

That simply means, as I have heretofore said to you, that if the inception of this purchase between Haggar Brothers and the plaintiff was carried out with the purpose on the part of Haggar Brothers to defraud the plaintiff in this case, then they had the right to rescind that sale and retake the goods, unless in the meantime a third party had purchased those goods for a valuable consideration without any notice of fraud, or without having any such facts before him as would put a reasonable man upon inquiry, as to the bona fides of the party, and which inquiry would have developed the fraud in question.

“The jury are instructed that in determining whether the defendant Samaha had previous notice of the fraudulent intent on the part of Haggar Brothers and Daavid Company, in their purchase from the plaintiffs and their sale to him, actual knowledge by said Samaha is not essential.”—

That is, you do not have to find that he had actual knowledge of this fraud—

“But if the jury believe from all the evidence that there was such facts as to excite suspicion on the part of the defendant Samaha the law will not permit him to shut his eyes but imposes upon
66 him the duty to look about him and inquire; whatever is notice enough to excite attention and put the party purchasing on his guard and call for inquiry is also notice if such inquiry is not made of everything to which it is afterwards found that such inquiry might have led; if the jury believe from the evidence that the defendant Samaha had sufficient information to lead him to a fact he must be deemed conversant with it,—”

That is to say, the law says that if a man has had such notice of the existence of a fact as to put him on inquiry, and he does not inquire, then it is the same as if he had had the actual notice—

“and if the facts observed or within the knowledge of the defendant Samaha were such as to awaken suspicion and lead a man of ordinary

prudence to make inquiry and he failed to make such inquiry then he is chargeable with notice of any fraudulent intent on the part of the seller and with participation in the fraud."

That is to say, that whilst actual knowledge is not essential in the determination of whether the defendant Samaha had previous notice of the fraudulent intent of the Haggar Brothers, it may be gathered however from the fact that such suspicious circumstances surrounded the transaction as would lead an ordinary cautious and prudent man to make an inquiry into it; and if such circumstances existed, and he did not make the inquiry, then the law assumes and places upon him the responsibility of having knowledge on the subject. In other words, if he had means of knowledge placed at his hand which an ordinarily prudent person would use, and he does not use them, then the law imputes knowledge.

67 "The jury are instructed that to establish fraud it is not necessary to prove it by direct and positive evidence, but it is a subject for legitimate inference from facts disclosed by the evidence; circumstantial evidence is not only sufficient but may be the only proof that can be adduced; and in this case it is not necessary for the plaintiffs to prove a fact or circumstances which singly and alone is conclusive evidence of fraud, nor to prove by direct and positive evidence that the purchase from the plaintiffs was fraudulent on the part of Haggar Brothers and Daavid Company and that the defendant Samaha had notice of their fraudulent intent, and if the jury find that they had such intent; but it is sufficient if the evidence in the case shows such facts and circumstances tending to that conclusion, as, by their presence together, may reasonably induce the jury to believe that said Haggar Brothers and Daavid Company did have such intent and that said Samaha had notice thereof as notice has been defined by the court."

That simply means, that after looking at all of the facts and circumstances in the case, you can infer from all those facts and circumstances that fraud existed or did not exist, as the case may be. In other words, you do not have to prove by positive and direct testimony that there was fraud. You can prove it by circumstantial evidence. You can prove it in various ways; and when you have gotten all the evidence before you, you have the right to infer from all of the facts, and base your conclusion upon that inference, whatever it may be.

"The jury are instructed that if they find that any witness has knowingly and willfully testified falsely in this trial, as to any material fact in controversy, they are at liberty to reject all or
68 any part of his testimony; but they are not bound to do so, but may give it such weight as they think it is entitled to. The credibility of the witnesses and the weight and effect of their testimony is exclusively within the province of the jury, in determining which they may consider the demeanor and apparent candor and intelligence of the witnesses while testifying; their interest or

want of interest in the result of the suit; and all the other facts and circumstances in the case."

That is to say, when you weigh the testimony offered by witnesses, you can take into consideration their demeanor when upon the stand, their interest in the case, the candor or want of candor with which witnesses testify, the intelligence or want of intelligence—you are entitled to consider everything that surrounds the witness upon the stand, and that appears in the case, and in that way to pass upon the credibility of the testimony.

The law says that if a witness testifies falsely about one material fact in a case, the jury are at liberty to find that he has testified falsely about every fact; but that is a matter that rests entirely in your discretion, and you may find that he has testified falsely about some facts and not about others. It is a matter that is purely within your own province to decide.

"The jury are instructed that they are not bound to believe what a witness has testified to simply because no other witness has contradicted it. But in determining the weight to be given to such testimony they may consider its probability or improbability and if
69 deemed by the jury improbable or irreconcilable with facts admitted or established to their satisfaction so as not to be believed by the jury they may disregard it."

That simply means that a witness may testify to a fact, and he may not be contradicted. It may not be possible to contradict him. You are not bound to believe that testimony, however, if you find other facts in the case which would make the fact that he has testified to improbable, or if it cannot be reconciled with other facts proved in the case, which you believe are true. So that you have to take all these things into consideration when you make up your minds as to the truth or untruth of a witness.

Now, gentlemen, I am sorry that I have had to go so fully into this matter, and the reading of these prayers will largely be a repetition of what I have already said.

"The jury are instructed that the plaintiffs must recover on the strength of their own title and right to possession and not on the defendants' lack of title and right to possession and the burden of showing title in the plaintiffs rests upon them, and unless the plaintiffs show title and right to possession in themselves at the time this action was commenced they cannot recover."

I do not exactly understand the force of that, except that in order for the plaintiffs to recover in this case they must recover on the strength of their own title and their right of possession. That is, that when they commenced this action, they were entitled in law to the possession of the goods, and if they were not entitled to it at the start, the fact that they acquired it afterwards, would not do them any good; and that they must depend on their own title, rather than on the weakness of the title of the other side. That is about the only
70 thing I can get out of that.

"If the jury find from the evidence that the plaintiffs sold and delivered the goods in controversy to the defendants W.

E. Haggar, S. E. Haggar and F. S. G. Daavid on credit, the mere fact that all of the purchase money was not paid would not deprive the defendants of their right of possession and ownership of said goods."

That is, if you believe the whole thing was sold on credit, the mere fact that the defendants had not paid the balance of the purchase money, would not give the plaintiffs the right to come in and retake the goods; but they could only retake them upon the theory I have already suggested, that when they sold them to Haggar Brothers, Haggar Brothers intended to cheat the plaintiffs out of them.

"The jury are instructed that unless the plaintiffs show by a fair preponderance of the evidence that the rugs taken under the writ of replevin issued in this case was some part of the identical rugs sold by the plaintiff to the defendants Haggar Bros. and Daavid, their verdict must be for the defendant Samaha, and that if they find from the evidence that some of the rugs taken under said writ were sold by the plaintiffs to the defendant Haggar Bros. and Daavid and some were not, their verdict must be for the defendant Samaha as to so many of the rugs as they may find were not sold by the plaintiff to the defendant Haggar Bros. and Daavid, even though they find that other of said rugs were obtained from the plaintiffs fraudulently."

That is to say, before you can find for the plaintiffs at all, you must find from the evidence that the rugs which they have taken were rugs that belonged to the plaintiffs in this case; and if you find
71 that any of those rugs were not rugs that were bought from Haggar Brothers by Samaha, but were rugs of his own, then no matter whether you find that the sale between these parties was fraudulent or not, they can only replevy such of those rugs as were sold by the plaintiff to Haggar Brothers. If you find that some of them belonged to Samaha, and that he had not gotten them from Haggar Brothers, then Samaha would be entitled to a verdict in this case for the amount of those rugs which were his, and which he had not gotten from Haggar Brothers. I will explain that later on, so that you may not become confused as to your verdict.

"The jury are instructed that parties to a business transaction are not presumed to deal with each other in bad faith—but on the contrary, are presumed to deal honestly and in good faith until the opposite is shown by the evidence upon the trial; and any one who alleges that acts are done in bad faith, or for a dishonest or fraudulent purpose, takes upon himself the burden of showing that such is the case. In other words fraud is never presumed, and it devolves upon him who alleges the fraud to show the same by satisfactory proof."

That simply means, as I understand the prayer, that ordinarily the law presumes that when men deal with each other they deal honestly; but that presumption is not very strong, and it can easily be destroyed by facts in a case; and therefore it only means that when

fraud is charged the law does not presume fraud, but on the contrary presumes that a man is naturally honest, and the person who charges the fraud is bound by the law to prove it by satisfactory proof. So, in other words, it simply means that the law does not presume fraud, and when fraud is charged that charge must
72 be sustained by the person who makes it. That is all that prayer means.

"The jury are instructed that the fraud to vitiate or affect the title of the defendant Samaha in this cause, if they find any fraud in the case, must be a fraud perpetrated upon the plaintiffs by the defendants Haggar Bros. and Daavid at or prior to the time said Haggar Bros. and Daavid purchased the goods in controversy from the plaintiffs and perpetrated by them in order to obtain said goods from the plaintiffs; that the plaintiffs claim here, as the owners of the goods in controversy and not as creditors of said Haggar Bros. and Daavid Co. and that even should they find that the conveyance subsequently made by Haggar Bros. and Daavid to Samaha was made for the purpose of hindering, delaying or defrauding their creditors, the plaintiff cannot complain of it,"—

I will stop right there, and repeat, gentlemen, to make clear your minds again what the purpose of this prayer is. The fraud that is charged here as having been perpetrated by Haggar Bros. upon the plaintiff, is a fraud which must have existed at the time they purchased these goods, either prior to or at that time. In other words, that when they purchased these goods, Haggar Brothers intended to beat or cheat these plaintiffs. If they did not mean to cheat them when they bought these goods, but it afterwards developed that they did mean to cheat their creditors when they sold these goods to Samaha, then the plaintiffs in this case could not recover; because the theory upon which the plaintiff comes into the case is that the sale was rescinded by him on account of the fraud which had been

perpetrated by these people, Haggar Brothers, when they
73 made this purchase. You will therefore understand that this is the very first thing for you to determine: Did they perpetrate this fraud at the time they bought these goods from the plaintiff?—

"and the jury are not to consider as affecting the right of the defendant Samaha to a verdict, any fraud committed by the defendants Haggar Bros. and Daavid Co., not relating to the purchase of said goods from the plaintiffs, though they may take into consideration in determining whether or not said Haggar Bros. and Daavid Co. obtained said goods from the plaintiffs by false or fraudulent representations or statements or in determining whether said goods were obtained from the plaintiffs by the defendants Haggar Bros. and Daavid Co. with an intent then existing on their part never to pay for them, all of the facts and circumstances in the case, including the conveyance from said Haagar Bros. and Daavid Co. to said Samaha."

That is to say, you cannot consider the influence of this transfer to Samaha by Haggar Brothers, unless you first find that Haggar Brothers had this fraudulent intent when they bought the goods from the plaintiff: and you can only consider that in connection with the question as to whether they were trying to defraud.

Gentlemen, do you want me to read this eleventh prayer? I do not believe the jury will get any more out of it than I have already given.

Mr. JONES: Not if you will explain the circumstances.

The COURT: I have explained the circumstances half a dozen times. Well, coming back to this eleventh prayer, I will try to give the meaning of the prayer.

74 Before you can find under any circumstances against the defendant in this case you must find one of two things. First: That Haggar Brothers and Daavid went there and made false representations, and upon those false representations credit was extended to them, Haggar Brothers knowing at the time that they were giving false statements to the plaintiffs for the very purpose of defrauding them, and the plaintiffs acted upon those statements in the belief that they were true. If those statements then turned out to be false, when the plaintiffs discovered they were false, they could rescind the sale. Second: That Haggar Brothers bought these goods with the purpose and intent of defrauding the plaintiffs, and had that intention when they bought them.

But if they bought them honestly at the start, intending to pay for them, and afterwards conceived the idea of defrauding the plaintiffs, that is not sufficient. The fraud must have existed at the time, and if it did not exist at the time Haggar Brothers bought these goods, then the plaintiffs cannot recover in this case, even though afterwards when the defendants made this transfer they intended to defraud the plaintiffs.

Therefore you see the fraud must go back to the inception of this case, because the right to replevy in this case depends upon the right to rescind that contract, and the right to rescind the contract depends upon the question as to whether or not they had been defrauded by the defendants Haggar Brothers, and Haggar Brothers had intended to defraud the plaintiffs when they bought those goods.

Now, gentlemen, I think I have stated your prayer in brief.

75 Then the whole thing seems to me to be summed up in the twelfth prayer:

"The jury are instructed that even should they find that the defendants Haggar Bros. and Daavid bought said rugs from the plaintiffs by fraudulent and false representation or with an intent on their part never to pay for them"—

Even though you may find that the defendants Haggar Brothers bought them, either by false or fraudulent representation, or with intent to defraud them—

"Their verdict must nevertheless be for the defendant Samaha if they further find"—

Now, here comes the condition—

“That said Samaha bought said rugs from said Haggar Bros. and Daavid Company, and paid them a valuable consideration therefor”—

That is, the \$10,000 and odd dollars—

“and that at the time said Samaha bought and paid for said rugs he had no knowledge of the alleged fraud practiced upon the plaintiffs nor of any fact which would excite the suspicions of a man of ordinary prudence and which if pursued would lead to a discovery of the fraud.”

That is the whole law of this case put in a nutshell—that if you find these parties, the Haggar Brothers, intended to defraud the plaintiffs at the outset, you must then go a step further and find that Samaha, when he bought these goods either had the knowledge of the fraud, or had knowledge of such facts as would have put an ordinarily prudent man upon inquiry as to that fraud, and which inquiry would have led him to discover it. That is the whole thing in a nutshell.

Mr. SIDDONS: Your honor said something about speaking of the form of the verdict.

76 The COURT: I am going to do so now.

As I said to you before, there are several kinds of verdicts that you may find in this case. If you find that the plaintiff is entitled to recover, and that all of the goods ought under the proof in this case to be his, then your verdict would be that you find for the plaintiff for the goods replevied, and assess the damages for their detention at one cent. In other words, you find for the plaintiff and assess the damages at one cent. That is one form of verdict.

If you find for the defendant, then you say you find for the defendant, and assess the amount of damages, the value of the goods. You do not order the return of the goods, because it is conceded in this case that the goods are not in existence. Therefore, it is agreed that you will find the amount of the value of the goods; and you would say simply that you find for the defendant and state the value of the goods which you find, in the shape of damages, giving him the value, whatever you believe the value of those goods to be from the evidence in the case.

Those are the simple verdicts.

Now it may happen that you think from the evidence that the plaintiffs ought to recover part of these goods, but that some other part of the goods were not gotten by the defendant from Haggar Brothers, but that they were his. In that event you would have to give a double kind of a verdict. You would find for the plaintiff for the 47 rugs, and one cent damages, and you would find for the defendant for 43 rugs and such damages for the detention as you may find.

77 Mr. SIDDONS: Your Honor refers to the defendant Samaha.

The COURT: Yes, the defendant Samaha. You understand that.

Now gentlemen, that as I have said, is a little complicated, as compared with the ordinary cases you try, but I think you will have no difficulty. If you find for the plaintiff for everything, you simply say "We find for the plaintiff" and assess the damages at one cent, nominal damages. If you find for the defendant you simply say "We find for the defendant," and assess the amount of the damages at the value of the goods whatever they were, in your judgment, from the evidence in the case, worth. If you were for both, you say "We find for the plaintiff for the 47 rugs, and one cent damages," and you would find for the defendant for the 43 rugs—or rather for the value of those rugs, because you find the damages for the value of them instead of the rugs themselves.

I hope you understand this case. I am sure you have listened attentively to the evidence, and that you will apply the law to the facts. You may now retire.

The jury thereupon retired to consider their verdict, and returned a verdict for the plaintiffs.

Be it further remembered that each of the separate and several exceptions taken by counsel for the defendant, as hereinbefore set forth, were so taken by the counsel for the defendant then and there before the jury retired and each of said exceptions so taken was then and there separately and severally duly entered upon the minutes of the justice presiding at the trial, and counsel for the defendant then and there prayed the court and now prays the court to sign this their bill of exceptions and the same is accordingly done now for
78 then, and made a part of the record of this case, this 13th day of November, A. D. 1905.

HARRY M. CLABAUGH,
Chief Justice.

Settled by consent this 13th day of Nov. 1905.

RALSTON & SIDDONS,

EUGENE A. JONES,

Attys for M. Samaha.

H. W. SOHON,

For Plaintiffs.

79 *Designation for Transcript on Appeal.*

Filed November 18, 1905.

In the Supreme Court of the District of Columbia.

Law. No. 46623.

E. T. MASON & COMPANY

vs.

HAGGAR BROTHERS & DAAVID Co. and MANSOUR SAMAHA.

The clerk will please prepare transcript of record on appeal to the Court of Appeals, and include therein the following:

1. Declaration and affidavit.
2. Writ of replevin, schedule and return.
3. Plea of the defendant Mansour Samaha.
4. Joinder of issue.
5. Verdict.
6. Judgment.
7. Order granting Mansour Samaha a severance on appeal.
8. Memorandum—appeal bond filed.
9. Memorandum—term prolonged thirty-eight (38) days to settle bill of exceptions, and time to file transcript extended to December first, 1905.
10. Memorandum—bill of exceptions submitted.
11. Bill of exceptions and order making same part of record.

RALSTON & SIDDONS,

EUGENE A. JONES,

Attorneys for Appellant, Mansour Samaha.

80 *Designation of Additional Portion of Record for Transcript.*

Filed November 22, 1905.

In the Supreme Court of the District of Columbia.

Law. No. 46623.

E. T. MASON & Co.

vs.

HAGGAR BROTHERS & DAAVID Co. AND MANSOUR SAMAHA.

The clerk will please add to the transcript of record in the above entitled cause as designated by the attorneys for the defendants:

(a.) The appearance of Ralston & Siddons for the defendants N. E. Haggar and S. E. Haggar and Ferdinand G. Daavid, and the plea filed by them for said defendants December 30, 1903;

- (b.) The joinder of issue on said plea;
- (c.) Memorandum of payment of \$180. into the registry of the court May 24, 1905.

H. W. SOHON,
Attorney for Plaintiff.

81 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 80, inclusive, to be a true and correct transcript of the record, as per directions of the counsel herein filed, copy of which is made part of this transcript, in cause No. 46623 at law, wherein Edmund T. Mason, *et als.*, are plaintiffs, and N. E. Haggard, *et als.*, are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 29th day of November, A. D. 1905.

Seal Supreme Court
of the District of
Columbia

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1631. Mansour Samaha, appellant, *vs.* Edmund T. Mason *et al.* Court of Appeals, District of Columbia. Filed Dec. 1, 1905. Henry W. Hodges, Clerk.

